



# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION  
1919 M STREET, N.W.  
WASHINGTON, D.C. 20554

DA 96-1685

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## PUBLIC COMMENT INVITED

### CELLULAR COMMUNICATIONS OF PUERTO RICO, INC. PETITION FOR DECLARATORY RULING OR RULEMAKING TO DETERMINE WHETHER COMPETITIVE BIDDING PROCEDURES SHOULD BE USED TO LICENSE CERTAIN CELLULAR RURAL SERVICE AREAS

(RM-8897)

On September 9, 1996, Cellular Communications of Puerto Rico, Inc. (CCPR) filed a petition for declaratory ruling or, in the alternative, for rulemaking requesting that certain cellular rural service areas should be granted by competitive bidding rather than lottery. We request comment on this petition as well as the issues discussed below.

After the passage of the Omnibus Budget Reconciliation Act of 1993, the Commission determined that it would use competitive bidding procedures to select from among mutually exclusive applications in the Public Mobile Services, including cellular service, unless specifically excepted.<sup>1</sup> However, the Commission later determined that in the case of cellular unserved licenses for which applications were filed prior to July 26, 1993, lotteries rather than competitive bidding procedures would be used.<sup>2</sup> On July 12, 1996, the Wireless Telecommunications Bureau issued a Public Notice ("July 12 Public Notice") which stated that it would relottery six cellular Rural Service Area ("RSA") markets in which applications were filed prior to July 26, 1993, but the original lottery winner had been disqualified.<sup>3</sup> The scheduled lottery has since been postponed.<sup>4</sup>

<sup>1</sup> Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348 (1994).

<sup>2</sup> Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 7387 (1994).

<sup>3</sup> *Public Notice*, FCC to Hold Domestic Public Cellular Telecommunications Service Lottery for RSA Markets in Which Previous Winner was Defective, Mimeo No. 63896 (July 12, 1996).

<sup>4</sup> *Public Notice*, Wireless Telecommunications Bureau Postpones Cellular Telecommunications Service Lottery for Rural Service Areas, Mimeo No. 65051 (Sept. 10, 1996).

In its petition, CCPR argues that the license for one of the six markets, RSA No. 727A, in Ceiba, Puerto Rico, should be awarded through competitive bidding. CCPR states that the Commission's decision with respect to pre-July 26, 1993 applications for cellular unserved areas should not be applied to RSAs, that the Ceiba RSA constitutes a commercially viable cellular market, that the applications filed for the original lottery were filed over eight years ago, and that sufficient interest exists in this market to award it through competitive bidding.

This petition raises issues concerning the broader applicability of the use of competitive bidding to award cellular licenses for RSAs for which applications were filed prior to July 26, 1993, where the original tentative selectee has been disqualified and no license has been awarded to date. We will therefore treat CCPR's petition as a petition for rulemaking, and request comment on it, as well as on the applicability of awarding cellular market licenses via competitive bidding in all cellular markets for which applications were filed with the Commission prior to July 26, 1993, and the original lottery winner has been disqualified.

This rulemaking proceeding (RM-8897) will be treated as a non-restricted proceeding for purposes of the Commission's *ex parte* rules. See 47 C.F.R. § 1.1206. However, parties are reminded that the pending application proceedings in the six RSAs identified in the July 12 Public Notice remain restricted pursuant to 47 C.F.R. § 1.1208. In this regard, CCPR's petition is deemed an impermissible *ex parte* presentation to the extent that it relates to the restricted application proceeding for RSA No. 727A, in Ceiba, Puerto Rico. Documents in such proceedings should be served on all active parties. However, because in cellular proceedings involving applications for non-wireline licenses it is not feasible for parties to serve the often numerous mutually exclusive applicants, the Commission's policy in such situations is to identify documents provided in a public notice and make them available to the public. See, e.g., *Public Notice*, Report No. CL-89-210, Mimeo No. 3573 (July 11, 1989); see also 47 C.F.R. § 1.1200(a). Accordingly, such documents will be placed in the record of the application proceeding and may be considered in determining the merits.

Interested parties may file comments on CCPR's petition for rulemaking no later than November 25, 1996. Reply comments may be filed no later than December 10, 1996. All comments should make reference to RM-8897 and be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. A copy of each filing should be sent to International Transcription Service, Inc. (ITS), 2100 M Street, N.W., (202) 857-3800 and Eric J. Bash, Federal Communications Commission, Wireless Telecommunications Bureau (WTB), Commercial Wireless Division, Legal Branch, 2025 M Street, N.W., Room 7130, Washington, D.C. 20554.

The full text of CCPR's petition for rulemaking is available for public inspection and duplication during regular business hours in the Wireless Telecommunications Bureau Reference Room, Federal Communications Commission, 2025 M Street, N.W., Room 5608, Washington, D.C. 20554. Copies may also be obtained from ITS.

For further information contact Eric J. Bash, Wireless Telecommunications Bureau, Commercial Wireless Division, at (202) 418-7227.

Action by the Chief, Commercial Wireless Division, Wireless Telecommunications Bureau.